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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,592	01/25/2001	Alan D. Berenbaum	Berenbaum 11	3560

7590 07/16/2004

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EXAMINER

MURPHY, RHONDA L

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/768,592

Applicant(s)

BERENBAUM, ALAN D.

Examiner

Rhonda L. Murphy

Art Unit

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-22 is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informality: The data period detector on lines 8 and 9 of page 8 is designated as item "103" and is designated as "109" elsewhere in the specification and drawings. It is suggested to change these items in the specification to read "109".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Chapman et al. (US 6,233,245).

**Regarding claim 1**, Chapman discloses an automatic adaptive voice/data device, comprising a high priority transmission queue (col. 2, lines 16-17); a low priority transmission queue (col. 2, lines 16-17); a data rate detector to detect a data rate of a data stream from a particular source, and a periodicity detector to detect a periodicity

between data packets from said particular source (col. 5, lines 62-65; **data type determination 500** represents both the data rate detector and the periodicity detector); wherein data packets are provided to said high priority transmission queue and said low priority transmission queue based on their data rate and periodicity (col. 6, lines 9-20). **Regarding claim 2**, Chapman discloses data packets having a data rate and periodicity each within a particular range associated with voice data are passed to said high priority transmission queue (col. 5, lines 65-67, col. 6, lines 1-20). **Regarding claim 3**, Chapman discloses an automatic, adaptive voice/data device that is an Ethernet compliant device (col. 2, lines 10-11). **Regarding claim 4**, Chapman discloses data flow identification based upon at least one of a source address and a destination address of said data flow (col. 3, lines 26-29 and col. 6, lines 5-9).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman et al. (US 6,233,245) in view of Haddock et al. (US 2004/0081093).

**Regarding claims 5 - 7, 13 - 15**, Chapman discloses an automatic, adaptive voice/data device according to the rejection of claims 1-4 as described above, and claim 12 below.

Chapman does not explicitly disclose a source address and destination address as a media access control address, internet protocol address, or transport control protocol.

However, the above-mentioned claim limitations are taught by Haddock. Haddock teaches identification of data streams based on media access control (MAC), Internet protocol (IP) and transmission control protocol (TCP) source and destination addresses (page 3, paragraph 35).

In view of this, having the system of Chapman and then given the teachings of Haddock, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Chapman, by utilizing the MAC, IP, and TCP source and destination addresses taught by Haddock, so as to identify data streams based upon various OSI layers.

**Regarding claim 8**, Chapman identifies a data flow from a particular source (col. 2, lines 18-21); determining a data rate of said data flow (col. 5, lines 62-65; col. 6, lines 1-20); determining a periodicity of a receipt of packets in said data flow (col. 5, lines 62-65; col. 6, lines 1-20).

Chapman does not explicitly disclose the following limitation taught by Haddock: assigning a particular Quality of Service to said packets based on said data rate and periodicity (page 2, paragraph 13).

In view of this, having the system of Chapman and then given the teachings of Haddock, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Chapman, by incorporating a Quality of Service to the packets, so as to provide the most efficient and jitter reducing method of optimizing data flow.

**Regarding claim 9**, Chapman discloses data packets having a data rate and periodicity associated with a voice stream, as stated in the rejection of claim 2.

However, Chapman fails to disclose the step of assigning packets to a particular Quality of Service having a data rate and periodicity associated with a voice stream, which is taught by Haddock (page 2, paragraph 22; and page 4, paragraph 48).

In view of this, having the system of Chapman and then given the teachings of Haddock, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Chapman, by incorporating a step of assigning packets to a particular Quality of Service, so as to provide the most efficient and jitter reducing method of optimizing data flow.

**Regarding claim 10 - 12**, the combined teachings of Chapman and Haddock discloses all aspects of the claimed invention set forth in the above rejections. Haddock further discloses tagging a packet within said data flow, forwarding the tagged packet within the data flow according to a particular Quality of Service, and identifying data flow from particular source according to a source address and a destination address. (page 2, paragraph 29).

Art Unit: 2667

**Regarding claim 16**, the combined teachings of Chapman and Haddock discloses all aspects of the claimed invention set forth in the above rejections. Haddock further discloses tagging a packet within a data flow according to the length of the packet (page 5, paragraph 61).

**Regarding claim 17**, the combined teachings of Chapman and Haddock discloses all aspects of the claimed invention set forth in the above rejections. Haddock further discloses calculating a time difference between a last most recent packet arrival and a current clock value (page 5, paragraph 56).

#### ***Allowable Subject Matter***

6. Claims 18-22 are allowed. Prior art does not teach all of the limitations cited in claims 18-22.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rhonda L Murphy whose telephone number is (703) 308-9557. The examiner can normally be reached on Monday - Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (703) 305-4798. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 2667

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rlm

  
RICKY NGO  
PRIMARY EXAMINER